IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 798 of 2001
---
OPMV.381/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
.....

APPELLANT/PETITIONER:
---

MUBEENA, D/O. ABDULLA, AGED 13 YEARS,
REPRESENTED BY FATHER AND GUARDIAN ABDULLA,
MUTHIRA HOUSE, 5TH MILE, KELLUR P.O.,
MANANTHAVADY VIA., WYNAD DISTRICT 670645.

BY ADV. SRI.T.G.RAJENDRAN
SRI.N.J. ANTONY

RESPONDENTS/RESPONDENTS:
---

1. K.KUNHIKRISHNAN, S/O. A. KANNAN NAIR,
AGED 68 YEARS, KARINGHAT HOUSE, PADIGHATTAM
KOVIL P.O., NILESHWAR, KASARAGOD DT.
(DRIVER OF KLS 4104 TEMPO D.L.NO.552/66)

2. G. VASANTHA NAYAD, S/O. K. GOPALA NAYAK,
AGED 55 YEARS, SAI NIVAS,NILESWAR, HOSDRUG,
KASARAGOD DISTRICT (OWNER OF KLS 4104 TEMPO)

3. UNITED INDIA INSURANCE COMPANY LIMITED,
NILESWAR (CERTIFICATE NO. DO 804/31/20)

R1 & R2 BY ADV. SRI.SHIRAZ ABDULLA
R3 BY ADV. SRI.MATHEWS J.NEDUMPARA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J.B. KOSHY and K.P.BALACHANDRAN, JJ.**

---

**M.F.A.No. 798 of 2001**

---

**Dated this the 24th day of May, 2007**

**Judgment**

**Koshy, J.**

Appellant met with a motor accident at the tender age of six. On 9.5.1992, while she was walking through the side of the Mananthavady - Kalpetta road and reached at 5th mile, Kellur at about 11.30 a.m. tempo van bearing registration No.KLS 4104 driven by the first respondent in a rash and negligent manner came from Kalpetta side and hit the appellant and thereby appellant fell down and sustained serious injuries including head injury and fracture of the right hand. The appellant was immediately taken to the District Hospital, Mananthavady from where she was referred to the Medical College,Hospital, Kozhikode where she was treated as an inpatient for 51 days. Even after discharge from the Medical College Hospital, she was continuously under treatment. A claim petition was filed on behalf of the minor by her father guardian claiming an amount of Rs.2,15,000/- as compensation. According to the appellant, due to the accident, the minor appellant has

been physically and mentally incapacitated and she is having a mere vegetable existence after the accident. It has come out in evidence that she is an inmate of the Centre for Mentally Handicapped run by the Vellamudna Grama Panchayat. The Motor Accidents Claims Tribunal found that the accident occurred due to the negligence of the driver (first respondent) of the temp van owned by the second respondent and insured by the third respondent insurance company. Existence of insurance policy at the time of accident is not disputed. However, the tribunal awarded only a total compensation of Rs.22,000/- with interest. The only dispute in this appeal is regarding the quantum of compensation. For total permanent disability, tribunal has awarded only Rs.10,000/-.

2. Ext.A4 is the wound certificate which shows the following injuries:

"1. Head injury.

2. Right hand bone fracture above elbow.

3. Abrasion 4 x 3 c.ms. below right elbow.

4. Breathing problem.

5. Pupil reading slugglishly to light.

6. Abrasion all over the body.

7. Focalares contusion in left temporal lobe.

8. Cerebral aedema.

9. Contusion on chest."

Ext.A5 is the medical certificate issued from the Medical College Hospital, Kozhikode and Ext.A7 is the index card, Ext.A10 certificate issued by the Secretary, Vellamunda Grama Panchayat shows that she is physically and mentally handicapped. She was treated for 51 days in the Medical College Hospital, Kozhikode. Thereafter also she was under treatment and she is continuously under treatment and unable to do any work. It was contended by the counsel for the appellant that since she is admitted in a Centre for Mentally Retarded, her disability is 100%. Considering the contentions, we have referred the appellant for medical examination by Medical Board constituted at the Medical College Hospital, Kozhikode. The Medical Board of the Medical College Hospital, Kozhikode consisting of three eminent specialists in Orthopaedics, Physical Medicine and Psychiatry examined her and certified 50% permanent disability. It is also stated in the certificate that Neuro Surgery consultation was also made before issuing the certificate. It is

contended very vehemently by the counsel for the appellant that when there is 50% permanent disability for a minor girl, it is almost equivalent to 100% disability as she was denied all the enjoyment of a normal human being. She is unable to marry, unable to go to the school and it was contended that her life is miserable. Assessment by the Medical Board was on 22.6.2006 which shows that after 14 years of the accident also, there is no improvement in her condition. Admittedly, she was aged only six at the time of accident. She is living a miserable life in this condition. As per the second schedule, multiplier is 15. If we take the notional income, monthly income for a non-earning person fixed in the second schedule is Rs.15,000/-. Even though she is running a vegetable life, we are of the opinion that for awarding the compensation, we accept the disability certificate issued by the Medical Board and we award compensation for 50% disability. If that be so, compensation payable will be Rs.15,000 x $\frac{50}{100}$ x 15 = Rs.1,12,500/-. The tribunal has awarded only Rs.10,000/- for the permanent disability and that has to be deducted and appellant will be entitled to

Rs.1,02,500/- as additional compensation over and above the compensation awarded by the tribunal.

3. It is contended that Rs.400/- was awarded for medical expenses against a claim of Rs.50,000/- and Rs.1,000/- for expenses of the attendant while she was an inpatient for more than 51 days. It is submitted that no amount was awarded for future medical expenses. No amount was also awarded for loss of amenities. Considering the nature of injuries and considering the present condition of the appellant and also considering the long inpatient treatment she had undergone, we award Rs.7,500/- more towards medical expenses, attendant expenses, future medical expenses and loss of amenities. Thus, the appellant is entitled to get an additional amount of Rs.1,10,000/- more than that is awarded by the tribunal. The above amount of Rs.1,10,000/- should be deposited by the third respondent insurance company within two months from the date of receipt of a copy of this judgment with 7% from the date of application till its deposit. Out of the above amount, Rs.25,000/- should be released to the father of the appellant immediately for the benefit of the girl. Balance amount should be deposited in a Nationalised Bank and periodical monthly

interest should be released to the father of the appellant till the appellant becomes major and thereafter should be released to the appellant. The appellant can approach the tribunal if any further amount is needed for urgent necessity.

The appeal is allowed partly.

**J.B.KOSHY**
**JUDGE**

**K.P.BALACHANDRAN**
**JUDGE**

vaa

**J.B. KOSHY AND**
**K.P.BALACHANDRAN, JJ.**

---

M.F.A. NO.798/2001

---

**JUDGMENT**

Dated:23rd May, 2007